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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff and Respondent,

v.

ARTURO AGUIRRE,

Defendant and Appellant.

B290620

(Los Angeles County  
Super. Ct. No. 8PH03151)

APPEAL from an order of the Superior Court of Los Angeles County, Jerry B. Marshak, Commissioner. Reversed with direction.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Numa Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Arturo Aguirre appeals the trial court's order that revoked his parole, arguing that there was insufficient evidence he willfully violated parole by failing to report to his parole agent. We reverse, concluding the court abused its discretion by revoking defendant's parole.

## **FACTS AND PROCEDURAL BACKGROUND**

Defendant was convicted of possession of a controlled substance in November 2016 and sentenced to two years and eight months. He was released on parole from Avenal State Prison on Wednesday, May 16, 2018, with funds to travel to Los Angeles. As part of the terms and conditions of his parole, he was required to report to his parole agent the following day and participate in GPS monitoring. After failing to report the day after his release, defendant's parole agent unsuccessfully tried to locate him. The agent contacted defendant's relatives and local hospitals, and searched jail databases. He then obtained a warrant for defendant's arrest on Friday, May 18, 2018. On Monday, May 21, 2018, defendant reported to the parole office in Los Angeles, where he was taken into custody on the warrant.

The People filed a petition to revoke defendant's parole, alleging he absconded from parole supervision and failed to participate in GPS monitoring. At the contested hearing, defendant's parole agent and defendant testified. The parole agent testified to the facts summarized above. Defendant provided an explanation for why he failed to timely report to parole. He testified that, on the day of his release, he was beaten and robbed by gang members while waiting for his train in Bakersfield. They took all of his belongings, including his money and debit card. Defendant stated he "was left a bloody mess" but "did not call the police for fear of retaliation." He testified that he attempted to panhandle for money to buy a train ticket to Los

Angeles but was unsuccessful. While stranded in this unfamiliar city, defendant met people who were on their way to Los Angeles. He hitched a ride and arrived in Los Angeles late Friday night (May 18, 2018). The parole office was closed on Saturday and Sunday. On Monday at around 10:00 or 11:00 a.m., he reported to the parole office, where he explained the delay to his parole agent. The agent photographed the injuries defendant sustained during his encounter with gang members. The photos, which were received in evidence, show facial bruising and a laceration on defendant's lip. Defendant also sustained injuries to his scalp that resulted in swelling, which were not visible (masked by his hair).

Defendant further testified that he was released from prison early for good behavior, prompted by trying to make every effort to return to his wife and four kids. He told the court, "I would not have given it my all to just throw it all away and abscond." His counsel argued defendant "did the best he could under the unfortunate circumstances of having been jumped and beaten up." Counsel highlighted that defendant was beaten, robbed of all possessions (including his transportation funds), and left stranded in an unfamiliar city, but nonetheless made every effort to check-in with parole at the earliest opportunity. Counsel also noted defendant's story was corroborated by his injuries.

Following argument by counsel, the court stated, "I certainly do sympathize with what happened to you in Bakersfield. I've seen the photo. It is quite startling. [¶] From Parole's point of view, there was a long delay here between when you were released and when you did finally report. And it really needed to be a lot shorter than that. [¶] I don't know if a phone call or any other kind of contact would have helped ameliorate the filing of this petition or the arrest warrant. I don't know. It seems like a very short time. Perhaps it's not something that

each of us would have done if we were in parolee's shoes, but they do have the ability to do this. It is within the law. [¶] You did have the requirement that you signed to report by . . . 10:00 A.M. . . . the following day. And transportation was given. [¶] Things that happened that are very unfortunate, but this is the position parole is taking. [¶] And on these facts I do find to be true counts 1 and 2 that you failed to report as agreed and failed to participate in GPS monitoring on a timely basis.”

The trial court found defendant violated his parole as alleged in the petition, revoked his parole, ordered defendant to serve 180 days in county jail, and otherwise reinstated parole on the same terms and conditions.

## DISCUSSION

Defendant argues the trial court abused its discretion because the evidence did not support a finding that his violation was willful.<sup>1</sup>

### 1. Legal Principles

At a parole revocation hearing, the prosecution is required to demonstrate, by a preponderance of the evidence, that a parole violation has occurred. (Pen. Code, § 3044, subd. (a)(5); see *People v. Rodriguez* (1990) 51 Cal.3d 437, 446–447 (*Rodriguez*).) The violation must be willful. (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 382, disapproved on another ground in *People*

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<sup>1</sup> We agree with defendant that this issue is not moot. Although defendant has served his 180-day sentence, the parole revocation may have collateral consequences and be used against him in criminal and noncriminal matters. (See *People v. Ellison* (2003) 111 Cal.App.4th 1360, 1368–1369.) Reversal of the parole revocation would also result in the 180 days defendant spent in custody being credited to the maximum period of his parole (thus reducing the length of his parole by 180 days). (Pen. Code, § 3000, subd. (b)(6).)

*v. DeLeon* (2017) 3 Cal.5th 640, 646; see *People v. Hall* (2017) 2 Cal.5th 494, 498 [willfulness standard for probation revocation]; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379 (*Zaring*) [same].)

We review a revocation order for abuse of discretion. (*In re Miller* (2006) 145 Cal.App.4th 1228.) For the court’s factual findings, we use the substantial evidence standing. (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318 [probation revocation hearing]; see also *Rodriguez, supra*, 51 Cal.3d at pp. 441–447.)

## **2. The Court Abused of its Discretion**

Here, substantial evidence did not support the court’s finding that defendant willfully absconded from parole supervision and failed to participate in GPS monitoring. The record shows that defendant was en route to Los Angeles on the day he was released from prison, when he was physically attacked and robbed by gang members. Despite having no money or means of transportation, defendant obtained a ride to Los Angeles from strangers and reported to parole at essentially his first opportunity. The trial court specifically acknowledged defendant’s “startling” injuries and apparently believed his account of events, stating that the court sympathized with him.

The court recognized that following the gang assault and robbery, it is unclear what, if anything, defendant could have done to avoid a parole violation: “I don’t know if a phone call or any other kind of contact would have helped ameliorate the filing of this petition or the arrest warrant. I don’t know. It seems like a very short time.”<sup>2</sup> The court appeared reluctant to find

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<sup>2</sup> The court also said the delay “really needed to be a lot shorter than that.” It is not clear from that statement whether the court was referring to the parole agent’s expectations or to the court’s own views.

defendant in violation, but nonetheless revoked his parole, stating that it believed the parole agent has “the ability to do this. It is within the law.”

In *Zaring, supra*, 8 Cal.App.4th at page 379, the Court of Appeal reversed the defendant’s probation revocation where circumstances outside of the defendant’s control similarly prevented her adherence to parole conditions. In *Zaring*, the defendant probationer arrived 22 minutes late to a court-ordered hearing. (*Id.* at pp. 365-366.) At a subsequent probation revocation hearing, the defendant testified that she had been late for the prior appearance because her planned child care arrangements fell through when the caretaker was ill, and the defendant’s transportation (through a family member) was delayed until her children could be taken to school. (*Id.* at p. 376.) The trial court found true the probation violation based upon the defendant’s failure to appear on time for the prior hearing. (*Id.* at p. 367.)

The Court of Appeal reversed and held that the defendant’s late arrival to court because of the “last[-]minute unforeseen circumstance as well as a parental responsibility common to virtually every family” was not a willful violation of any term of probation. (*Zaring, supra*, 8 Cal.App.4th at p. 379.) The court further noted that there was nothing in the record to support a conclusion that the defendant’s conduct “was the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court.” (*Id.* at p. 379.) The Court of Appeal continued: “the discretion that the trial court is empowered to use is predicated upon reason and law but is primarily directed to the necessary end of justice. As judges, such discretion requires the application of sound judgment that takes into consideration that life is not always predictable and that things do not always go according to plan.” (*Ibid.*)

Likewise here, unpredictable events outside of defendant's control prevented defendant from strictly adhering to his parole conditions. There is nothing in this record to suggest that defendant's conduct "was the result of irresponsibility, contumacious behavior or disrespect for" the conditions of his parole. (*Zaring, supra*, 8 Cal.App.4th at p. 379.) Indeed the trial court appears to have reached the same conclusion. Under these circumstances the court's parole revocation constituted an abuse of discretion.

### **DISPOSITION**

We reverse the court's order revoking defendant's parole. On remand, the 180 days defendant spent in custody are to be credited to the maximum period of defendant's parole (thus reducing the length of his parole by 180 days). (See Pen. Code, § 3000, subd. (b)(6).)

RUBIN, P.J.

WE CONCUR:

BAKER, J.

KIM, J.